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No. 97-1121

In the Supreme Court of the United States

October Term, 1997

CITY OF CHICAGO,

Petitioner,

v.

JESUS MORALES, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF THE UNITED STATES CONFERENCE OF MAYORS, THE NATIONAL LEAGUE OF CITIES, THE NATIONAL ASSOCIATION OF COUNTIES, THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION and THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE[1]

The organizations filing this amicus brief all have a vital interest in legal issues affecting the powers and responsibilities of local governments. The United States Conference of Mayors is the official nonpartisan organization of the more than 1,000 cities in the United States with populations of 30,000 or more. The National League of Cities is the country's oldest and largest organization serving municipal government. Its direct members include more than 1,400 cities of all sizes and 49 state municipal organizations; its total membership includes over 17,000 municipalities. The National Association of Counties represents over 3,000 counties. The International City/County Management Association is the professional association that represents the interests of over 8,800 appointed local government managers.

The International Municipal Lawyers Association ("IMLA") is a nonprofit, nonpartisan organization consisting of over 1,400 local governments and their attorneys. Member governments operate IMLA through their chief legal officers. The International Association of Chiefs of Police, Inc. is the largest organization of police executives and managers in the world, consisting of more than 15,000 members from 72 nations.

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[1] The parties have consented to the filing of this brief. Copies of the letters of consent have been filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amici curiae*, their members, and their counsel made a monetary contribution to the preparation and submission of this brief.

SUMMARY OF ARGUMENT

Chicago's gang-loitering ordinance is a narrowly tailored response to the very serious problem of gang intimidation on city streets. As demonstrated in Part I below, urban gang violence has reached epidemic proportions as gangs have gained a stranglehold on many inner-city neighborhoods. Law-abiding citizens have become prisoners in their own homes, afraid to venture out because of the gang members who loiter in the streets outside their doors. Chicago's gang-loitering ordinance was designed to give police a weapon to break the gangs' stranglehold, by allowing officers to order groups of gang members congregating for no apparent purpose to disperse and to arrest those who refuse to "move on."

Purporting to apply this Court's decision in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), the Illinois Supreme Court struck down the ordinance on grounds that would make it impossible for local governments to enforce almost any loitering ordinance. First, the court below found the very concept of "loitering" to be too vague to provide a predicate for the imposition of criminal penalties—even though in this case, the ordinance permitted a person loitering in the company of gang members to be arrested only if he or she refused a police order to "move on." Then, the court went even further, suggesting that a valid gang loitering ordinance could *never* be constructed, no matter how precise its wording, because it would inevitably infringe on a perceived constitutional right to loiter.

This Court should grant the City's Petition in order to remedy the confusion apparent in the lower courts concerning the proper reach of this Court's decision in *Papachristou*. As demonstrated in Part II below, the Illinois Supreme Court's conclusion that Chicago's gang-loitering ordinance is unconsti-

tutionally vague conflicts with numerous cases upholding loitering ordinances that are in many ways indistinguishable from the Chicago ordinance. In addition, as demonstrated in Part II below, the Illinois Supreme Court's recognition of a constitutional right to loiter is directly at odds with the California Supreme Court's recent decision in *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 602, cert. denied, 117 S. Ct. 2513 (1997), which expressly refused to recognize such a right. In *Acuna*, the California Supreme Court rejected constitutional challenges to an injunction that operated in much the same way as the Chicago ordinance, concluding that the public's right to be protected from gang violence and intimidation outweighed whatever conceivable liberty interest individual gang members might have in loitering on public streets.

Communities throughout the country are searching for new and innovative ways to control gang violence and intimidation. Decisions like this one inevitably chill legitimate experimentation. This Court should grant certiorari and reverse the decision below.

ARGUMENT

I. The Chicago Ordinance Is An Appropriate Response To Gang Warfare

A. Urban Gang Violence Has Reached Epidemic Proportions

America's cities are under siege. In most large urban areas, and increasingly in medium and small ones as well, stories of innocent persons shot in gang war crossfires have become staples of newspaper headlines and TV news. *E.g.*, Gammon, *Suspected Gang Member Held in Fatal Shooting of 13-Year-Old*, L.A. Times, Feb. 27, 1998, at B5; Power, *Boy headed to school killed by gang member, police say*, Dallas Morning News, Jan. 29, 1998, at 21A; Craig & Boyd, *Police order crackdown after drive-by killings*, Ft. Worth Star-Telegram, Jan. 7, 1998, at 1.

There are over 23,000 youth gangs in the United States, with over 650,000 gang members. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #72 (Dec. 1997) ("OJJDP Fact Sheet"). Gangs are active in 98 percent of municipalities with populations over 100,000. Statement of Steven R. Wiley, Chief of FBI's Violent Crimes and Major Offenders Section, before the U.S. Senate Committee on the Judiciary, Apr. 23, 1997 ("Wiley Statement"). Chicago has some 125 street gangs, with more than 100,000 members. James B. Burns, U.S. Attorney, *Anti-Violent Crime Initiative Fact Sheet Northern District of Illinois* (1996). Four of Chicago's gangs —the Gangster Disciples, the Vice Lords, the Latin Kings, and the Latin Disciples—account for half of the city's gang members, dominate vast sections of the city, and have extended their tentacles into 35 states. Wiley Statement, *supra*.

These street gangs are not benign associations of disadvantaged youths, but sophisticated criminal enterprises. A recent study, based on interviews with 99 gang members in St. Louis, found that most members "define their gang in terms of criminal involvement." G. David Curry & Scott H. Decker, *What's in a Name?: A Gang by any Other Name isn't Quite the Same*, 31 Val. U. L. Rev. 501, 504 (1997). After statistically demonstrating that young people commit more crimes, and more serious crimes, during periods of gang membership than prior to entering or after leaving the gang, the study's authors concluded: "Gangs facilitate the commission of crime. To ignore that is to ignore (or worse, to excuse) the violence gang members commit against each other and their communities." *Id.* at 514.

Although criminal gangs have long been part of the urban landscape, they have taken a dramatic new direction in recent years, away from small-scale and localized activities to highly organized takeovers of entire neighborhoods based on the acquisition of lethal weaponry financed by the lucrative trade in crack cocaine. See Herbert C. Covey et al., *Juvenile Gangs* 101 (1992); Mills & Bunuel, *Small Gang's Big Grip Troubles Neighborhood—The Saints Have Grown More Violent And More Diverse Since Forming In The 1960s*, Chi. Trib., Feb. 11, 1998, at B1. Brass knuckles and baseball bats are no longer the weapons of choice. See *There Are No Children Here*, Economist, Dec. 17, 1994, at 21 ("Now automatic and semi-automatic assault weapons are *de rigueur*"). Chicago and Los Angeles alone accounted for over 1,000 gang homicides in 1994. OJJDP Fact Sheet, *supra*. As one researcher has concluded, "The amount of lethal violence currently directed by youth gangs in major cities both against one another and against the general public is without precedent." Covey, *Juvenile Gangs*, *supra*, at 27.

Vast stretches of the nation's cities have become the equivalent of war zones. A study of Chicago's gangs labeled them "a mobilized army, in the tens of thousands." Chicago Crime Commission, *Gangs: Public Enemy Number One* (1995). Gang-dominated parts of Los Angeles have been described as "small armies of youths fighting one another and the police." Stanley, *Child Warriors*, Time, June 18, 1990, at 30. Indeed, the U.S. Army has trained its doctors in a South Central hospital to familiarize them with the types of gunshot wounds they may encounter on the battlefield. Stanley, *Los Angeles: All Ganged Up*, Time, June 18, 1990, at 50.

The gangs themselves view their operations militarily. The Economist reported on an "area co-ordinator" of Chicago's Gangster Disciples who controls a stretch of turf ten blocks long and five blocks wide and who has 150 "soldiers" working for him. *There Are No Children Here*, *supra*. These gang "soldiers" are becoming progressively younger. See Thomas, *Putting Children on the Front Lines*, Wash. Post, June 20, 1996, at A1; Mills & Bunuel, *Not yet 13—and a murder suspect*, Chi. Trib., Feb. 4, 1998, at A1; *There Are No Children Here*, *supra* (citing Chicago anti-gang counselor's estimate that 80% of boys aged 13 to 15 in the area where he works are involved in gangs). Children growing up in gang-dominated neighborhoods often show signs of post-traumatic stress disorder. Alfredo Gonzalez et al., *Introduction* to *Gang Violence Prevention* 5-6 (1990). As one journalist reported several years ago, "many of the children emerge from the streets of Los Angeles more psychologically scarred than the young mujahedin who patrol the mountain passes of Afghanistan." Stanley, *Child Warriors*, *supra*, at 30.

B. The Gangs Use Street Intimidation As A Military Tactic

Stationing small groups of gang members on the streets is vital to the success of the gangs' criminal operations. These groups stake out and lay claim to gang turf, sell drugs to finance the procurement of arms, recruit new members (often coercively), serve as lookouts and intelligence gatherers, and intimidate neighborhood residents and passers-by. See Pet. 3. Intimidation takes many forms, including wearing gang colors and clothing, flashing gang signs, and plastering buildings with graffiti. See Michael Genelin, *Gang Prosecutions: The Hardest Game in Town*, in *The Gang Intervention Handbook* 417 (1993). Street-corner squads of gang members also facilitate the commission of violent gang crimes. See Malcolm W. Klein, *The American Street Gang* (1995); *Man Demanding Gang Affiliation Shoots Teen Standing on Street*, Chi. Trib., Feb. 17, 1998, at B3.

Law-abiding citizens are effectively imprisoned in their homes as a result of the mere presence of gang members on the streets. A California State Task Force on Gangs and Drugs observed that "[s]ome communities are literally held captive by the violence, intimidation and decay." California Council on Criminal Justice, State Task Force on Gangs and Drugs, *Final Report* 16 (1989). One woman told a court that the presence of gang members made her afraid to walk down her street to buy a loaf of bread in broad daylight. Zane, *Judgment against Owner of Crime-Ridden Building*, S.F. Chron., Mar. 21, 1995, at A18. Civil rights leader Jesse Jackson expressed the feelings of many when he stated, "Just to think we can't walk down our

own streets, how humiliating." Johnson, *Crime: New Frontier*, Chi. Sun-Times, Nov. 29, 1993, at 4.[2]

The California Supreme Court has vividly portrayed what can happen to a community when gang members are permitted to congregate without any effective control. Describing a four-square-block neighborhood in San Jose as "occupied territory," the court explained:

> Gang members, all of whom live elsewhere, congregate on lawns, on sidewalks, and in front of apartment complexes at all hours of the day and night. They display a casual contempt for notions of law, order, and decency—openly drinking, smoking dope, sniffing toluene, and even snorting cocaine laid out in neat lines on

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[2] Although some would argue that the police action authorized by the Chicago ordinance might have a harsh and disproportionate impact on minority youths, prominent African-American scholars have recognized that the failure of municipalities to take back the streets from gang members will permit the much harsher impact of gang violence to continue to flourish. In the words of Randall Kennedy, "the main problem confronting black communities in the United States is not excessive policing and invidious punishment but rather a failure of the state to provide black communities with the equal protection of the laws." Randall Kennedy, *The State, Criminal Law, and Racial Discrimination*, 107 Harv. L. Rev. 1255, 1256 (1994). See also Christo Lassiter, *The Stop and Frisk of Criminal Street Gang Members*, 14 Nat'l Black L.J. 1, 2 (1995) (urging the need to "stop and frisk" street gang members and to permit identifiable membership in a criminal gang to "alone constitute reasonable suspicion"). There can be no dispute that the most frequent victims of gang violence are law-abiding residents of minority communities. See Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, and Unequal* 179-198 (1992) (detailing racial demographics of crime victims).

> the hoods of residents' cars. The people who live in Rocksprings are subjected to loud talk, loud music, vulgarity, profanity, brutality, fistfights and the sound of gunfire echoing in the streets. Gang members take over sidewalks, driveways, carports, apartment parking areas, and impede traffic on the public thoroughfares to conduct their drive-up drug bazaar. Murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft are commonplace. * * * The people of this community are prisoners in their own homes.

People ex rel. Gallo v. Acuna, 929 P.2d 596, 601 (Cal. 1997).

Unchecked gang intimidation has a snowballing effect: law-abiding citizens feel pressured to move out of gang-ridden communities, leaving behind a neighborhood of increasingly concentrated criminal activity. Those who stay behind are unlikely to venture out into the streets, where "their simple presence would otherwise be a deterrent to crime." Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349, 371 (1997). Indeed, residents may be afraid even to *report* a crime, because cooperating with the authorities may be perceived not only as dangerous, but useless as well. *Id.* at 376.

Children are particularly vulnerable to the intimidation of gang members congregating on the streets. Fear is the primary tool of gang recruitment. If you're a child and not in a gang, a Chicago anti-drug counselor told the Economist, "you're a target wherever you go." *There Are No Children Here*, *supra*. In Chicago, the heavy gang presence on the streets around the Robert Taylor Homes housing project has resulted in "waves of fear-induced absenteeism" from neighborhood

schools, prompting hundreds of volunteers to band together to shepherd children to school and the School Board to hire dozens of parents to serve as escorts. Braun, *Shepherds for a Flock in the Cross-Fire*, L.A. Times, Jan. 16, 1998, at A1; Martinez, *Parents paid to walk line between gangs and school*, Chi. Trib., Jan. 21, 1998, at A1.

C. Prophylactic Measures, Such As The Chicago Ordinance, Are Vital Tools.

Traditional police methods, even when coupled with increasingly stiff penalties on gang offenders, have failed to control gang violence and intimidation. See C. Ronald Huff, *Denial, Overreaction, and Misidentification*, in *Gangs in America* 310, 313 (C. Ronald Huff ed., 1990); Walter B. Miller, *Why the United States Has Failed to Solve Its Youth Gang Problem*, in *Gangs in America* 263, 267; *Steps Needed to Combat Gangs*, L.A. Times, Feb. 15, 1998, at B9 ("Efforts to rid our communities of gangs are either nonexistent or not working"). Gang-related violence "is so sporadic, so random, so hard to predict, that it's hard to stop," according to a police official in Elgin, a small city close to Chicago. "There's nothing that we haven't done or haven't tried to stop the gangs." Grandziel, *Gang Shootings Riddle the Peace Amid Local Rivals*, Chi. Trib., Jan. 15, 1998, at B1.

Studies show that gang murders are less likely to be solved than other murders, in part because they generally take place on the street and thus leave few physical clues. See *Gang Killings Exceed 40% of L.A. Slayings*, L.A. Times, Dec. 5, 1996, at A1. Moreover, gang intimidation often succeeds in frightening potential witnesses away from the courtroom, leaving prosecutors without a case. See *Acuna*, 929 P.2d at 614 (noting that numerous residents "refused to furnish declarations, fearing for their lives if any gang member should

discover their identities"); *Gang Violence to Silence Foes Grows*, Orlando Sentinel, June 18, 1997, at A4 (describing how gang members congregated in front of the Orlando courthouse to intimidate witnesses).

In light of the failure of traditional policing methods, leading criminologists have stressed the need for forceful preventive measures against gang activity. See James Q. Wilson, *Just Take Away Their Guns*, N.Y. Times Mag., Mar. 20, 1994, at 46-47. Local governments have taken a number of different approaches. For example, nearly a dozen cities in California—including Los Angeles, Pasadena, Norwalk, and San Jose—have sought civil injunctions against gang actions that constitute a public nuisance. Savage & Rivera, *Court Upholds Injunction Against Gangs*, L.A. Times, June 28, 1997, at A1. Other communities have stepped up enforcement of teen curfews.

Like the Chicago ordinance, these approaches seek to prevent serious crime *before* it occurs by breaking the gangs' stranglehold on the streets and destroying their aura of invincibility. Dispersing gang members and arresting them for violating a loitering or similar ordinance disrupts their ability to commit more serious crimes. Moreover, it sends a clear signal that the community will no longer tolerate gang intimidation and disorder. Over time, that strategy should allow law-abiding citizens to regain control of the streets and encourage young people who are now forced into gangs to resist their recruitment efforts. See David Matza, *Delinquency and Drift* 52-59 (1990). In fact, the empirical evidence cited by the City in its Petition shows that the Chicago ordinance did succeed in substantially decreasing gang crime. See Pet. 9.

For all of the reasons outlined below and in the City's Petition, the Chicago ordinance is "a legitimate and appropriate

means by which to combat the problems of escalating violence and crime in American cities." Lisa A. Kainec, Comment, *Curbing Gang Related Violence in America*, 43 Case W. Res. L. Rev. 651, 652 (1993). Indeed, in many ways, it is a more effective and less restrictive alternative than other measures that have been found constitutional. The kind of injunctions against gang activity upheld by the California Supreme Court in *Acuna* have proven difficult to enforce. See L. Sherman, *Oceanside gang becoming active despite injunction, police confirm*, San Diego Union-Trib., Feb. 18, 1998, at B3. And teen curfews are much more intrusive than Chicago's narrowly-targeted loitering ordinance, since they restrict the liberty of *all* teenagers.[3]

II. The Illinois Supreme Court's Interpretation Of *Papachristou* Conflicts With Numerous Cases Upholding The Validity Of Loitering Ordinances.

This Court long has recognized that cities have the right to prevent "antisocial conduct" on their streets and sidewalks through ordinances directed with "reasonable specificity" toward the prohibited conduct. *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). In this case, however, the Illinois Supreme Court struck down Chicago's gang-loitering ordinance on the ground, among others, that it failed to provide a sufficient explanation of the conduct prohibited and left too much discretion to individual police officers to decide who could and could not be ordered, on pain of arrest, to "move on."

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[3] Curfews are also difficult and costly to enforce. A recent survey by *amicus* U.S. Conference of Mayors found that 276 of 347 responding cities had nighttime curfews for teenagers, but reported that many respondents complained of the high costs involved in enforcing those curfews. See *More cities use curfews to try to cut youth crime*, Chi. Trib., Dec. 1, 1997, at A10.

The court rejected the argument that the officer's discretion was properly limited by the requirement that an order to disperse be given only if he "reasonably believe[d]" that a group of loiterers included a member of a criminal street gang. Pet. App. 61a. Citing this Court's decision in *Papachristou*, the court below treated that limitation as immaterial, concluding that Chicago's ordinance effectively allowed police to arrest anyone they deemed to be undesirable. Pet. App.17a.

In fact, the ordinance does no such thing. No one can be arrested without first disobeying an order to "move on." Moreover, an order to "move on" will not be valid unless the officer had a reasonable suspicion that one of the people standing around in a group for no apparent purpose was a member of a criminal gang. The Chicago City Council expressly found that "loitering in public places by criminal street gang members creates a justifiable fear for the safety of persons and property in the area because of the violence, drug-dealing and vandalism often associated with such activity." Pet. App. 60a-61a. Thus, the ordinance is designed to allow an officer to issue an order to "move on" only in circumstances where there is a reasonable apprehension of a likely threat to the safety of persons or property.

The Chicago ordinance is similar in many respects to more traditional loitering ordinances, which have often —although not always—been upheld against vagueness challenges. For example, in *City of Milwaukee v. Nelson*, 439 N.W.2d 562, 563 n.1 (Wis. 1989), the Wisconsin Supreme Court rejected a vagueness challenge to an ordinance that prohibited loitering "in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that

warrant alarm for the safety of persons or property."[4] Accord *State v. Ecker*, 311 So. 2d 104, 109 (Fla. 1975); *Bell v. State*, 313 S.E.2d 678 (Ga. 1984) (upholding a similar ordinance); *Salt Lake City v. Savage*, 541 P.2d 1035, 1036 (Utah 1975) (same); *State v. Starks*, 186 N.W.2d 245 (Wis. 1971) (same); *City of Seattle v. Drew*, 423 P.2d 522 (Wash. 1967) (same).In *Ecker*, the Florida Supreme Court rejected the argument that the ordinance was unconstitutional because it was subject to the kind of arbitrary enforcement condemned in *Papachristou*, noting that the circumstances that would permit an officer to make a stop pursuant to the ordinance "are not very different from those that the United States Supreme Court described as 'specific and articulable facts' in *Terry v. Ohio*, [392 U.S. 1, 21 (1968)]." 311 So. 2d at 110.

Although a number of courts have disagreed and struck down similar loitering ordinances,[5] *Terry* provides a logical framework for limiting an officer's discretion under traditional loitering ordinances and under the Chicago ordinance as well. In *Terry*, this Court reached a reasonable accommodation between individual and community rights by permitting police officers to pat down suspects whom they reasonably suspect of contemplating a crime. That decision allayed the same kinds of concerns about arbitrary enforcement voiced by the Illinois

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[4] The ordinance challenged in *Nelson* is based on the American Law Institute's Model Penal Code § 250.6. See 439 N.W.2d at 565.

[5] See *City of Bellevue v. Miller*, 536 P.2d 603 (Wash. 1975) (striking down an ordinance similar to that upheld in the *Nelson* case); accord *City of Portland v. White*, 495 P.2d 778 (Or. Ct. App. 1972); *Powell v. Stone*, 507 F.2d 93 (9th Cir. 1974), rev'd on other grounds, 428 U.S. 465 (1976); *United States ex rel. Newsome v. Malcolm*, 492 F.2d 1166 (2d Cir. 1974), aff'd, 420 U.S. 283 (1975); *People v. Berck*, 300 N.E.2d 411 (N.Y. 1973).

Supreme Court here, by crafting an objective standard—"reasonable suspicion"—based on how "a reasonably experienced police officer" would construe the facts at hand. 392 U.S. at 21-22. The Chicago ordinance is simply an application of the *Terry* principle that an experienced police officer should be able to take appropriate crime prevention measures based on a reasonable suspicion informed by objective factors. See also *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (reaffirming *Terry* reasonableness standard); *id.* at 380 (Scalia, J., concurring) (under the common law at the time the Bill of Rights was ratified, it was "reasonable to detain suspicious persons for the purpose of demanding that they give an account of themselves").

Like a *Terry* stop, an order to disperse under the Chicago ordinance and the implementing Police Department Order (see Pet. App. 66a-67a) has to be based on objective criteria that lead to reasonable suspicion by an experienced police officer. But those criteria are relatively easy to define. Gang members make a point of flaunting their membership, via particular tattoos, jackets, clothing colors, clothing position (*e.g.*, the direction their hats or belt buckles face), hand signals, and hair styles. See Martin S. Jankowski, *Islands in the Street: Gangs and American Urban Society* (1991); *Davis v. State*, 1998 WL 57720, at *9-*10 (Ala. Feb. 13, 1998) (describing how bandanna colors identify gang affiliation). As a result, gang membership lends itself to articulable, objective, and reasonable discernment by well-trained and experienced police officers.[6]

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[6] Indeed, an identification of gang membership is likely to be a good deal more objective than the kind of drug courier profile that this Court found to be sufficient to justify detention of an alleged

(continued...)

The Illinois Supreme Court's void-for-vagueness analysis is indicative of the confusion that surrounds loitering ordinances generally.[7] *Amici* urge this Court to grant the City's Petition in order to dispel that confusion and enable local governments to enforce reasonably drawn measures to control crime, like Chicago's gang-loitering ordinance.

III. The Illinois Supreme Court Erred In Concluding That The Ordinance Unreasonably Intrudes Upon Constitutional Protected Activity.

This Court should also grant the City's Petition to review the Illinois Supreme Court's conclusion that *Papachristou* recognizes an apparently absolute constitutional right to loiter. As the City points out, the California Supreme Court recently considered—and rejected—the very same argument in *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal.

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[6](...continued)
drug trafficker in *United States v. Sokolow*, 490 U.S. 1 (1989).

[7] The courts are also sharply divided on whether *Papachristou* requires invalidating ordinances that proscribe "loitering plus." Compare, *e.g.*, *City of Tacoma v. Luvene*, 827 P.2d 1374, 1379 (Wash. 1992) (upholding a drug-loitering ordinance that makes it unlawful "to loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the purpose to engage in drug-related activity"); *State v. VJW*, 680 P.2d 1068, 1070 (Wash. Ct. App. 1984) (upholding a Seattle "prostitution loitering" ordinance); and *City of Akron v. Holley*, 557 N.E.2d 861, 867 (Ohio Mun. Ct. 1989) (upholding a drug-loitering ordinance), with *American Civil Liberties Union v. City of Alexandria*, 747 F. Supp. 324 (E.D. Va. 1990) (invaliding an ordinance similar to Tacoma's); *Wyche v. State*, 619 So. 2d 231 (Fla. 1993) (same); *E.L. v. State*, 619 So. 2d 252, 253 (Fla. 1993) (same); *Johnson v. Carson*, 569 F. Supp. 974, 975 (M.D. Fla. 1983) (striking down a prostitution-loitering ordinance).

1997). In that case, the court upheld an injunction against gang activity that was found to constitute a public nuisance. In practice, the injunction was in many ways more restrictive than the Chicago ordinance, enjoining dozens of gang members from, among other things, "[s]tanding, sitting, walking, driving, gathering or appearing anywhere in public view with any other defendant * * * or with any other known" member of the identified gangs. *Id.* at 608. Despite the breadth of the injunction, the California Supreme Court declined to find that the gang members' constitutional rights to associate were implicated. Because the injunction did not infringe on either intimate or private activity or joint political or social advocacy, the court concluded that it simply did not implicate any constitutionally protected interest. *Id.* at 609.

In any event, the Illinois Supreme Court erred in concluding that whatever intrusion there might be into protected "liberty" interests was unreasonable. As the California Supreme Court recognized in *Acuna*, a court must consider not only the rights of gang members, but also the rights of the community:

> The state has not only a right to "maintain a decent society," but an obligation to do so. * * * [T]he community's right to security and protection must be reconciled with the individual's right to expressive and associative freedom. Reconciliation begins with the acknowledgment that the interests of the community are not invariably less important than the freedom of individuals. Indeed, the security and protection of the community is the bedrock on which the superstructure of individual liberty rests.

Id. at 603 (citation omitted).

By concentrating solely on the "liberty" interests of people who had refused to "move on" in response to a police order, the Illinois Supreme Court ignored the liberty interests of law-abiding citizens. As the record in this case and numerous scholarly studies demonstrate, permitting groups of gang members to camp out on city streets impedes the very liberties invoked by the court below—to travel, to move freely, and to associate with others. People living in gang-infested neighborhoods who wish to walk along their streets and associate with their neighbors have every right to do so free of threats, whether voiced or silent, and to expect the police to take crime prevention measures to promote their personal safety and the integrity of their homes, businesses, and communities.

In his concurring opinion in *Kovacs* v. *Cooper*, 336 U.S. 77, 89 (1949), Justice Frankfurter remarked that "[w]ise accommodation between liberty and order always has been, and ever will be, indispensable for a democratic society." The Chicago ordinance provides a good example of just such a "wise accommodation." The ordinance recognizes that individual liberties are hollow without community safety. Although it imposes some restraints on the ability of some individuals to stand on the street for no apparent purpose, those restraints are minimal and more than justified by their potential to greatly expand the liberties enjoyed by law-abiding residents.

As the California Supreme Court observed in *Acuna*, to allow the liberty of the peaceful and industrious residents of a community to "be forfeited to preserve the illusion of freedom for those whose ill conduct is deleterious to the community as a whole is to ignore half the political promise of the Constitution and the whole of its sense." 929 P.2d at 618. The Chicago ordinance implements the most basic promises of our Constitution—to "insure domestic Tranquility, provide for the

common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity." This Court should reverse the court below to enable Chicago to give effect to those promises and to prevent the horrors of gang violence from rendering them meaningless.

CONCLUSION

For the reasons outlined above and in the City's Petition, the *amici* urge the Court to grant the City's Petition and to reverse the judgment below.

Respectfully submitted.

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